APPEAL NO. 93041

A contested case hearing was held in (city), Texas, on November 9, 1992, (hearing officer) presiding, to determine whether respondent (claimant) was injured in the course and scope of his employment on or about (date of injury), whether claimant reported such injury to Pride Petroleum Services (employer) within 30 days as required by the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-5.01(a) (Vernon Supp. 1993) (1989 Act), and whether claimant has disability as a result of the (date of injury) injury. The hearing officer determined these disputed issues in claimant's favor and carrier requests our review for sufficiency of the evidence. Claimant, who was neither represented nor assisted at the hearing, filed no response.

DECISION

Finding sufficient evidence to support the hearing officer's findings and conclusions, we affirm.

In challenging the sufficiency of the evidence to support the hearing officer's determinations, the carrier acknowledges that this case turns on the credibility of the witnesses, maintains that claimant's testimony is not credible, and asserts that the evidence is simply too scant to support the findings. The hearing officer himself, gratuitously, stated in his discussion that "[t]his case is very close." With regard to the date of the injury, claimant testified that the accident occurred about "the last of May" 1992, and later said, "I myself said it was about the 20th or 23rd, between there," and that it occurred on the day employer performed a one or two day drilling job for Bass Enterprise. Claimant stated that at the benefit review conference, "they said they were going to look at the tickets and find the exact date." At the hearing, the hearing officer asked the employer's representative, D T, to submit the Bass Enterprise invoice to establish the exact date of the injury and said the record would be left open for that purpose. Mr. T advised the hearing officer that employer could comply with that request. However, the record is devoid of any indication that such a document was later provided. The record does not contain any indication that claimant was provided assistance by the Texas Workers' Compensation Commission ombudsman.

According to the claimant, the accident occurred while employer was operating a drilling rig and laying down rods and tubing on a job for (employer). Claimant was holding back on the Foster tongs taking out tubing. He said that when he pulled the backup handle on the tongs, which was always difficult, he "had to give it all [he] had," his back "popped," and he grabbed his back. He said that Mr R, his supervisor, who was present as the rig operator, asked him what was wrong, and was it his back, and claimant responded that his "back just popped and its hurting." Claimant said Mr. R called him a "wimp" and told him to exchange places with coworker "Rudy" (apparently Mr M) and continue working. Mr. R testified, on the other hand, that he did not remember claimant reporting such an injury to him on May 20th; that on the day claimant grabbed his back they kept on working and claimant did not say anything or complain of his back; and that he did not have claimant exchange places with Rudy. Claimant stated he continued to work but also continued to

complain of his back. The sworn statement of Mr. M, a coworker, stated that he was at the rig site in May 1992 when claimant and R G were working the rig floor, that when claimant hurt his back, he and claimant switched places, and that Mr. R and Mr. G would not then let claimant work the tongs and said he was faking about his back. A transcript of a telephone interview of Mr G, introduced by carrier, stated that he never witnessed an accident when working with claimant and that claimant told Mr. G he hurt his back in a motorcycle accident.

At a safety meeting later that day, claimant said he asked employer for a support belt for his back. He said he also complained of his back from that day forward to employer's secretary, PH, and to MH, employer's supply person and mechanic. Mr. R testified he had "to push" claimant during his last month of work but did not know whether claimant's work problems were due to the accident. Mr. R acknowledged that employer paid each employee $50.00 every three months if no accidents were reported but denied such safety program resulted in his failing to report claimant's accident.

Claimant's back continued to hurt and on June 23rd he did not go to work but instead sought medical attention. When Mr. R came by claimant's house to pick him up for work, as was customary, claimant told him he had to see a doctor for his back and, according to claimant, Mr. R responded, "Oh, God, you know I never did an accident report." Mr. R testified, on the other hand, that claimant had then told him he had not hurt his back at work. Mr. R said he continued on to work and advised JA, employer's senior rig supervisor. Shortly later, Mr. A called claimant. Mr. A testified that he did see claimant on the (employer) job and that he became aware, through PH, that claimant had complained of his back hurting and had requested a back support belt. Mr. A said he never got around to obtaining a belt for claimant or for the other employees. He said that when he called claimant on June 23rd, he asked claimant if he had hurt his back at work and claimant replied he had not. He said he told claimant employer would pay for a belt if the doctor had one.

Claimant also testified that employer advised him he could not return to work without a doctor's release indicating he had not hurt his back on the job. Claimant said he told Dr. S that employer required a release letter and Dr. S said he could not do a release letter because it was a free consultation. According to Mr. A, employer did require a doctor's release before claimant could resume working and claimant never brought one in. He denied advising claimant that the doctor's release had to indicate that the injury did not occur on the job.

According to Dr. S records, claimant was seen and treated on June 23, 1992 for a job related injury. No x-rays or first report were then done because it was a free initial examination. He was next seen by Dr. S on September 28, 1992. Dr. S testing records indicate claimant provided a history of feeling his back pop when he was bent over on May 20th pulling on some tongs, and that he complained of pain in his neck and low back. The diagnosis on Dr. S Initial Medical Report (TWCC-61) was cervical sprain/strain, dorsal

sprain/strain, and lumbar radicular syndrome. Dr. S report of September 28th states that examination reveals that claimant did sustain an injury, is unable to work, and is at a very high risk for further injury should he return to work in his present condition. Asked whether he could return to work on June 24th, claimant said he had continued to work in pain after May 20th and that Mr. R kept referring to him as a "wimp." This doctor, Dr. S, did not really tell him anything, stating it was probably a slipped disc. Claimant said he told his employer he was still having pain and was willing to return to work. Carrier introduced evidence that claimant applied for unemployment benefits during the period from June 28th through August 22, 1992. The application forms of the Texas Employment Commission asked whether the applicant was able and available for work and claimant checked the "yes" block to answer these questions. Claimant readily acknowledged having applied for such benefits indicating he had no income. He said he went once to a prospective employer but was told they did not hire someone who was hurt. He said he had to make the effort to continue to be eligible for unemployment benefits. We have previously commented that statements made by a claimant to obtain unemployment compensation which are inconsistent with testimony given in support of a workers' compensation claim present a matter for the hearing officer's determination in weighing the credibility of the claimant's testimony. Texas Workers' Compensation Commission Appeal No. 91022, decided October 3, 1991.

Article 8308-6.34(e) provides that the hearing officer is the sole judge not only of the relevance and materiality of the evidence, but also of its weight and credibility. As the trier of fact, the hearing officer resolves conflicts and inconsistencies in the evidence. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer may believe all, part, or none of the testimony of a witness (Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.)) and may believe one witness and disbelieve others (Cobb v. Dunlap, 656 S.W.2d 550 (Tex. App.-Corpus Christi 1983, writ ref'd n.r.e.)). Though not obligated to accept the testimony of a claimant, an interested witness, at face value (Garza, *supra*), issues of injury and disability may be established by the testimony of a claimant alone. *See e.g.* Texas Workers' Compensation Commission Appeal No. 91083, decided January 6, 1992, and Texas Workers' Compensation Commission Appeal No. 92069, decided April 1, 1992. As an interested party, the claimant's testimony only raises an issue of fact for determination by the fact finder. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ. App.-Amarillo, no writ). The hearing officer, as the trier of fact, was free to believe claimant's testimony that he did indeed injure his back pulling on the backup handle of the Foster tongs on (date of injury), and that he immediately told his supervisor of the injury. With regard to the evidence concerning the issue of claimant's having disability from and after June 23rd, the hearing officer could consider claimant's testimony that after the accident he continued to work in pain and to complain of pain to employer until he sought medical treatment on June 23rd, the absence of evidence that his condition changed after June 23rd, and the September 28th report of Dr. S that not only could claimant not return to

work but that he ran a high risk of additional injury should he attempt to resume working. The fact finder can draw reasonable inferences and deductions from the evidence. Harrison v. Harrison, 597 S.W.2d 477, 485 (Tex. Civ. App. - Tyler 1980, writ ref'd n.r.e.). In reviewing a case, the Appeals Panel should not set aside the decision of the hearing officer because the hearing officer may have drawn inferences and conclusions different than those the Appeals Panel might deem most reasonable, even though the record contains evidence of or gives equal support to inconsistent inferences. Texas Workers' Compensation Commission Appeal No.91013, decided September 13, 1991. We do not substitute our judgment for that of the hearing officer where, as here, the challenged findings are supported by sufficient evidence. Texas Employers Insurance Association v. Alcantara, 764 S.W.2d 865 (Tex. App.-Texarkana 1989, no writ). The challenged findings and conclusions of the hearing officer are not so against the great weight and preponderance of the evidence as to be manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986).

The decision of the hearing officer is affirmed.

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Philip F. O'Neill
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.
Chief Appeals Judge

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Joe Sebesta
Appeals Judge